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OFFICE OF THE SECRETARY  
FEDERAL MARITIME COMM

January 9, 2004

Bryant L. VanBrakle  
Secretary  
Federal Maritime Commission  
800 North Capitol Street, N.W.  
Washington, D.C. 20573-0001

Re: Petition No. P3-03

Dear Secretary VanBrakle:

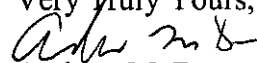
This law firm represents the American Institute for Shippers' Associations, Inc. ("AISA"). Please find enclosed for filing in the above-referenced proceeding one original and fifteen copies of AISA's Comments in Support of the Petition. Please note that AISA is filing consolidated comments in this proceeding and Petition Nos. P5-03, P7-03, P8-03, and P9-03. We have forwarded the required original and fifteen copies for each of these other proceedings by separate mailings.

Also enclosed is an additional copy of AISA's comments, which we request that you stamp for our files and return to the undersigned in the enclosed, self-addressed stamped envelope.

By separate e-mail this date we are forwarding to you an electronic version of AISA's comments in Word format.

Counsel for each of the Petitioners in each of the above-referenced proceedings have been served with copies of AISA's comments by first class US. mail.

Please contact the undersigned should you have any questions regarding the enclosed comments.

Very Truly Yours,  
  
Andrew M. Danas

Enclosures

MEMBER, EURO-AMERICAN LAWYERS GROUP

ASSOCIATED OFFICES:

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BEFORE THE  
FEDERAL MARITIME COMMISSION  
WASHINGTON, D.C.

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PETITIONS OF	)	
	)	
UNITED PARCEL SERVICE, INC.	)	PETITION NOS. P3-03
	)	P5-03
NATIONAL CUSTOMS BROKERS AND FREIGHT	)	P7-03
FORWARDERS ASSOCIATION OF AMERICA, INC.)	)	P8-03
	)	P9-03
OCEAN WORLD LINES, INC.	)	
	)	
BAX GLOBAL, INC.	)	
	)	
C.H. ROBINSON WORLDWIDE, INC.	)	

CONSOLIDATED COMMENTS OF  
THE AMERICAN INSTITUTE FOR SHIPPERS' ASSOCIATIONS, INC.  
TO PETITIONS

COMES NOW AMERICAN INSTITUTE FOR SHIPPERS' ASSOCIATIONS, INC., ("AISA"), by and through its undersigned counsel, and herein files its comments to the petitions of United Parcel Service, Inc.; the National Customs Brokers and Freight Forwarders Association of America, Inc.; Ocean World Lines, Inc.; BAX Global, Inc.; and C.H. Robinson Worldwide, Inc. Although each of these petitions seeks slightly different relief, and sets forth slightly different grounds for granting such relief, all of them seek to reduce the current regulatory obligations and restrictions placed on non-vessel-operating common carriers ("nvoccs") in the pricing and performance of their services. For the reasons further set forth below, AISA respectfully submits that should the Federal Maritime Commission ("FMC") determine that it has the authority to grant these petitions, it should institute a rulemaking proceeding looking toward establishing uniform guidelines allowing confidential contracting for all nvoccs under the broadest possible commercial contracting rules.

## ABOUT AISA

AISA was established in 1964. It is the trade association for shippers' associations. Based in Washington, D.C., AISA has actively represented the interests of shippers' associations in legislative and regulatory matters for the past 40 years. These matters have addressed issues in both domestic and international maritime transportation. AISA representatives have testified before the United States Congress and were actively involved with the drafting and enactment of both the United States Shipping Act of 1984 and the Ocean Shipping Reform Act of 1998. AISA has been involved in every major proceeding before the FMC interpreting those laws. AISA has also actively represented the interests of shippers' associations before international governments and governmental organizations involved with international shipping, for example, the Organization for Economic Co-Operation and Development (OECD) and the People's Republic of China.

## ABOUT SHIPPERS' ASSOCIATIONS

Shippers' associations are membership-only buying cooperatives usually consisting of small to medium sized shippers. Shippers' associations are unregulated entities, consistent with their historic status as transportation entities servicing their members. This legal status is pursuant to Congressional mandates authorizing shippers' association operations in the international and domestic transportation markets. Under the Shipping Act, shippers'

associations are legally defined as being shippers, thus enjoying all the rights and benefits of shippers under the Act.

Shippers' associations are active in all major international shipping trades. They operate both as full service and rate negotiator shippers' associations. Whether handling general commodity freight or specialized commodities, and regardless of the specific trade lanes, shippers' associations provide a very efficient mechanism for small to medium sized shippers to obtain access to volume discount rates and service contracts that would otherwise only be available to the largest shippers.

The individual members of a shippers' association would normally have insufficient volume, nor the time nor expertise, to negotiate competitive service contracts on their own. By joining and participating in a shippers' association, smaller shippers can obtain economically competitive ocean transportation rates that allow them to participate in international trade. This is usually accomplished by the shippers' association entering into service contracts which are then made available to the individual members of the association. Larger shippers may also choose to join a shippers' association, as a method of consolidating their freight to obtain greater volume discounts, or as a means to supplement their own, individual, service contracts with ocean carriers.

GRANTING THE RIGHTS SOUGHT IN THE PETITIONS  
WOULD ENHANCE SHIPPING OPTIONS, TO THE BENEFIT OF  
SHIPPER'S ASSOCIATIONS AND THEIR MEMBERS

Each of the petitions currently pending before the FMC requests a slightly different exemption from provisions of the Shipping Act. However, when taken as a whole, they seek variations of the same basic form of regulatory relief: the right of nvoccs to offer some form of confidential contract or service to their customers separate from the tariff publishing obligations currently governing their services. One petition also seeks to give nvoccs the alternative right to offer rates pursuant to a published tariff containing a range of rates.

Should the FMC determine that it has the authority to grant the petitions, AISA believes that the time has come to grant nvoccs the rights they seek, especially with respect to the right to offer individually negotiated contract services to shippers, including shippers' associations. Experience under OSRA has demonstrated that the ability to offer confidential one-on-one service contracts between carriers and shippers enhances competition. Shippers' associations have benefited from the increased contracting opportunities available to shippers under OSRA. Allowing nvoccs to offer terms and conditions divorced from tariff publishing will only serve to increase competition in the international ocean shipping industry. This, in turn, will benefit shippers' associations and their members.

Granting the petitions will benefit shippers' associations and their members in a number of different ways. First, authorizing nvoccs to enter into service contracts will give shippers'

associations another competitive option with respect to choosing their contract partners. Nvocc service contracts, especially from larger nvoccs providing global, multimodal services, may provide rates and services that are more competitive than some ocean carriers are able or willing to offer to individual shippers' associations. Service contracts offered by smaller nvoccs may help shippers' associations "fill the gap" with respect to member commodities or trade lanes that are not covered by service contracts directly entered into between the shippers' association and its ocean carrier contract partners.

Second, allowing nvoccs to offer contract rates and services would also assist shippers' associations in directly negotiating better contract rates with ocean carriers. Simply put, increasing the number of potential contract partners in any given trade lane will force ocean carriers to negotiate more creative and efficient contract rates and services with all shippers with whom they seek to do business, including shippers' associations.

Third, contracts offered by nvoccs will not be subject to the conference and discussion agreement restrictions that are imposed upon ocean carriers belonging to such groups. Their contracts will be truly confidential in the sense that nvoccs will normally not collectively meet to establish "voluntary guidelines" as to contract terms and conditions to offer to their customers. The increased number of potential contract partners in any given trade lane, operating outside of the conference and discussion agreement systems, will greatly enhance competition and weaken the ability of ocean carriers to act collectively on the terms and conditions they have discussed.

AISA recognizes that the five petitions before the FMC do not all ask for the same rights, or propose the same criteria, for exemption. AISA thus submits that if the FMC is to grant any exemption, it should not do so on a case-by-case basis, but should instead commence a rulemaking proceeding to establish uniform criteria that can be objectively applied to all nvoccs.

With respect to safeguarding the shipping public from nvoccs who may enter into and then breach contracts, AISA would note that nvoccs currently have the right to enter into service contracts with ocean carriers. As a basic proposition, AISA believes that the marketplace should be relied upon to allow shippers to determine whether any given nvocc is a trustworthy contract partner and the contractual terms that will guarantee performance of the nvocc's obligations. AISA also submits that the function of shippers' associations is to assist small and medium-sized shippers in this regard. To the extent that the ability of the nvocc industry to honor contractual guarantees with shippers is an issue, especially with respect to unsophisticated small to medium-sized shippers, the FMC should be able to adopt regulations which will protect the shipping community. One possible approach would be for the FMC to modify its current nvocc bonding obligations to ensure that the shipping public is adequately protected in the event that an nvocc defaults on its service contract obligations to any given shipper.

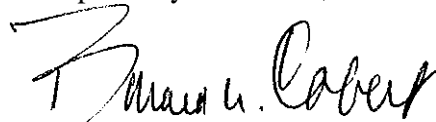
## CONCLUSION

In conclusion, AISA respectfully submits that should the FMC determine that it has the authority to do so, the generic relief of allowing nvoccs to confidentially contract sought in the

American Institute for  
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Petition Nos. **P3-03; P5-03;**  
**P7-03; PS-03; and P9-03**  
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live nvocc petitions should be granted. The FMC should commence a rulemaking proceeding establishing the criteria and conditions upon which non-vessel operating common carriers will be relieved of their tariff publishing obligations and be granted the right to offer and enter into confidential service contracts with shippers.

Respectfully submitted,



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Grove, Jaskiewicz and Cobert  
1730 M Street, N.W. Suite 400  
Washington, D.C. 20036  
(202) 296-2900

Counsel for:  
AMERICAN INSTITUTE FOR SHIPPERS' ASSOCIATIONS, WC.

Dated: January 9, 2004



American Institute for  
Shippers' Associations, Inc.  
Consolidated Comments on  
Petition Nos. **P3-03; P5-03;**  
**P7-03; PS-03; and P9-03**  
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***CERTIFICATE OF SERVICE***

I hereby certify that I have this day served the foregoing document upon counsel for the following Petitioners via United States Mail, First-Class Postage, Pre-Paid:

***Counsel for Petitioner United Parcel Service, Inc., in Petition No. P3-03:*** J. Michael Cavanaugh, Esq., Holland and Knight, LLP, 2099 Pennsylvania Avenue, N.W., Washington, D.C. 20006; Charles L. Coleman III, Holland and Knight, LLP, 50 California Street, Suite 2800, San Francisco, California 94111

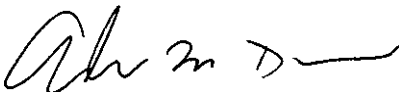
***Counsel for Petitioner The National Customs Brokers and Forwarders Association of America, Inc., in Petition No. P5-03:*** Edward D. Greenberg, Esq., and David K. Monroe, Esq., Galland Kharasch Greenberg Fellman & Swirsky, P.C., 1054 31st Street, N.W., Washington, D.C. 20037-4492.

***Counsel for Petitioner Ocean World Lines, Inc., in Petition No. P7-03:*** Leonard L. Fleisig, Esq., Troutman Sanders, LLP, 401 9th Street, N.W., Suite 1000, Washington, D.C. 20004

***Counsel for Petitioner BAX Global, Inc., in Petition No. P8-03:*** Edward J. Sheppard, Esq., Richard K. Bank, Esq., Ashley W. Craig, Esq., and Suzanne L. Montgomery, Esq., Thompson Coburn LLP, 1909 K Street, N.W., Suite 600, Washington, D.C. 20006. Therese G. Groff, Esq., General Counsel, BAX Global, Inc., P.O. Box 19571, Irvine, California 92715

***Counsel for Petitioner C. H. Robinson Worldwide, Inc. Petition No. P9-03:*** Carlos Rodriguez, Esq., Rodriguez O'Donnell Ross Fuerst Gonzalez & Williams, 1211 Connecticut Avenue, N.W., Suite 800, Washington, D.C. 20036

Dated at Washington, D.C., this 9th day of January, 2004.

  
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Andrew M. Danas